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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/860,465 03/12/97 BASSEON

G P15742

EXAMINER

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QW41/0416

NEAS, M

ART UNIT

PAPER NUMBER

3741

13

DATE MAILED:

04/16/99

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

**Office Action Summary**

Application No.

08/860,465

Applicant(s)

Basson et al

Examiner

Michael A. Neas

Group Art Unit

3741

 Responsive to communication(s) filed on Jan 26, 1999 This action is **FINAL**. Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

**Disposition of Claims** Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

 Claim(s) 14 and 15 is/are allowed. Claim(s) 1-13, 16, 18, and 19 is/are rejected. Claim(s) 17 and 20 is/are objected to. Claims \_\_\_\_\_ are subject to restriction or election requirement.**Application Papers** See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948. The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner. The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved. The specification is objected to by the Examiner. The oath or declaration is objected to by the Examiner.**Priority under 35 U.S.C. § 119** Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

 Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).**Attachment(s)** Notice of References Cited, PTO-892 Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_ Interview Summary, PTO-413 Notice of Draftsperson's Patent Drawing Review, PTO-948 Notice of Informal Patent Application, PTO-152

**--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---**

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## DETAILED ACTION

### *Response to Amendment*

1. The amendments and arguments presented by the applicant have been duly noted and considered. In view of such, the previous rejections are withdrawn. However, a review of the prior art of record has prompted the presentation of new rejections below. Specifically, a review of Carlisle and Mattsson (both of record) has prompted the presentation of new rejections under 35 USC 102 and 35 USC 103. Carlisle was previously applied against claims in the Office action mailed 12/24/97, paper #6. The rejections based on Carlisle were removed when the claims were amended to indicate that the lower rear portion of the wall corresponded to the zone occupied by the nape of the user. However, a review of Carlisle and additional analysis of claims 1 and 18 has prompted the presentation of rejections based on Carlisle. Specifically, the claims recite a "zone" which is an area and not any specific point. Figure 1 of Carlisle appears to show the lower portion of the rear of the helmet extending in the area of the nape (back of the neck). The term "zone" is interpreted broadly to include areas directly adjacent the nape. Note that the claims do not require the wall to directly overlie the nape or extend downwardly beyond the wearer's occipital protuberance. Even if the claims were amended to be more specific as to the location of the lower rear wall portion, it is the examiner's position that it would have been obvious to extend the rear wall of Carlisle beyond the wearer's occipital protuberance in view of other helmets which have walls extending to such a location. Also, Carlisle itself suggests that the length of the

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helmet segments may be increased in order to provide added protection in certain areas (col. 2, lines 18-19). Broadly, Carlisle and Mattsson both teach outer helmet shells which include cutouts to allow a rear portion(s) of the shell to bend with respect to other portions and thereby conform to a wearer's head.

***Claim Rejections - 35 USC § 112***

2. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The use of the term "or" in claim 5 is considered indefinite because it does not particularly define the scope of the claim.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 6-8, 16, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Carlisle.

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Carlisle discloses the invention as claimed. Carlisle teaches a protective helmet having a main outer shell comprising an apex 15 and segments 20-41. The main outer shell includes a wall comprising several segments which define a front facial opening (in the embodiment disclosed in column 2, lines 18-20 where the segments are extended to cover the ear). The lower rear portion of the wall includes resilient bending means in the form of segments 41,20,21 defined by cutouts. Segments 41,20,21 are formed in one-piece with the remainder of the outer shell. As shown in Figure 1, the lower rear edge of the shell is adjacent the wearer's occipital protuberance. Therefore, the bending means is considered to be in the "zone occupied by the nape of the user". The wall is deformable since it is disclosed as folding around the user's head (col. 2, line 69-col. 3, line 1). The wall is constructed from a plastic material, specifically polyethylene. The cutouts which define the segments open downwardly onto the lower rear edge of the helmet. With regard to claim 8, the helmet includes multiple cutouts at the rear, any of which could be considered lateral. With regard to claims 16 and 19, each cutout does extend to a position less than half the height of the helmet. Note that the claims do not require that the cutouts **only** extend to such height or that the cutouts **terminate** at such point.

5. Claims 1-3, 6-8 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Mattsson.

Mattsson discloses the invention as claimed. Mattsson teaches a protective helmet comprising a main outer shell 4 formed by a wall having a front facial opening. The lower rear edge of the wall includes resilient bending means in the form of two lateral cutouts which divide

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front helmet portion 1 from back flap 2. These cutouts extend downwardly to a zone occupied by the nape of the wearer. The cutouts are considered to be located in the rear lower portion of the helmet since they are located rearward of center in a side view (Figure 1). The shell 4 is constructed from a plastic which is at least deformable in the area of hinge 14.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlisle in view of Simpson.

Carlisle discloses the invention substantially as claimed. However, the shell of Carlisle is not constructed from a composite. Simpson teaches the use of a composite material in a helmet shell (column 1, lines 23-30). Since such a concept is known, it would have been obvious to form the shell of Carlisle from a composite material in order to provide added protection while making the helmet more lightweight.

8. Claims 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlisle.

Carlisle discloses the invention substantially as claimed. However, Carlisle does not disclose a central cutout, cutouts having the same length or cutouts having differing widths. As

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opposed to a central cutout, Carlisle teaches a central rear segment 20. However, one of ordinary skill in the art would have found it obvious to arrange the segments such that the helmet included a central cutout, cutouts having the same length and cutouts having differing widths in order to alter the protection provided in certain areas. Carlisle even suggests the change in composition of the segment arrangement in order to vary appearance or protection (col. 2, lines 18-19, col. 2, lines 33-44, col. 3, lines 13-17). With regard to claim 11, the cutouts of Carlisle differ in length as shown in Figure 2. With regard to claim 12, the cutouts of Carlisle have the same width (see Figure 2).

9. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mattsson in view of Simpson.

Mattsson discloses the invention substantially as claimed. However, the shell of Mattsson is not constructed from a composite. Simpson teaches the use of a composite material in a helmet shell (column 1, lines 23-30). Since such a concept is known, it would have been obvious to form the shell of Mattsson from a composite material in order to provide added protection while making the helmet more lightweight.

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***Allowable Subject Matter***

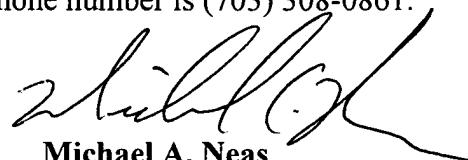
10. Claims 14 and 15 are allowed.
11. Claims 17 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Neas whose telephone number is (703) 308-0954. The examiner can normally be reached on Monday-Thursday from 7:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, can be reached on (703) 305-1025. The fax phone number for this Group is (703) 305-3579.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.



**Michael A. Neas  
Primary Examiner  
Art Unit 3741**

man  
April 14, 1999